



Kangi v Director of Criminal Investigation & another (Miscellaneous Criminal Application E034 of 2023) [2023] KEHC 18760 (KLR) (21 June 2023) (Ruling)

Neutral citation: [2023] KEHC 18760 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
MISCELLANEOUS CRIMINAL APPLICATION E034 OF 2023
FN MUCHEMI, J
JUNE 21, 2023**

BETWEEN

CHARLES NGARI KANGI APPLICANT

AND

DIRECTOR OF CRIMINAL INVESTIGATION 1ST RESPONDENT

DIRECTOR OF PUBLIC PROSECUTIONS 2ND RESPONDENT

RULING

Brief Facts

1. This application dated May 16, 2023 seeks orders of release by the respondent of motor vehicle registration number KCL 491E Toyota Sienta, Station Wagon, to the applicant. The vehicle is currently held at DCI office Mathira West.
2. The applicant has sworn an affidavit in which he deposes that he is the registered proprietor of motor vehicle registration number KCL 491E Toyota Sienta, Station Wagon and has annexed a copy of the log book as proof of ownership. He further deposed that he purchased the said motor vehicle in November 2022 at a consideration of Kshs Six Hundred Thousand (Kshs 600,000), from a loan he obtained from Equity Bank by virtue of being a member of Mathia Emmanuel Group as well as from other sources. He further deposed that he is in the public transport sector for over 15 years and the motor vehicle is used for business ferrying passengers to various destinations.
3. The applicant deposes that on 10/4/2023, police officers from the Directorate of Criminal Investigations at Karatina Police Station came to his place of work, informed him that one Anne Njeri Nderitu, a teacher based at D.E.B Primary School in Karatina, filed a complaint against him whereby she claimed that she had given the applicant money to purchase the said motor vehicle and thus it should be transferred to her or alternatively that the two be registered as joint owners. The police officers then directed him to take the said motor vehicle to Karatina Police Station where the vehicle



has been detained for over one month. The applicant states that he has tried to demand for the release of his motor vehicle with his advocates sending demand letter dated 10/5/2023 to the police but the demand has not been honoured.

4. The applicant avers that the continued detention of his motor vehicle is a breach of his fundamental rights as contained in the Constitution. He further avers that it is unlawful for the police to reach a determination as to the ownership of the motor vehicle and coerce him to transfer the same to the complainant. Moreover, the applicant states that he has lost earnings and profits for over a month due to the continued detention of his motor vehicle.
5. The hearing of the application proceeded by way of written submissions. The applicant reiterated what he deposed in his affidavit and submitted that the investigations by the 1st respondent is premised on trying to establish ownership of the said motor vehicle between him and the complainant. Therefore, the applicant submits that the motor vehicle is being detained unlawfully without any charges being preferred. Moreover, the applicant submits that the failure by the respondents to file a response and provide information as to why they are detaining the motor vehicle indicates how malicious the matter is being handled. As such, the applicant states that he has demonstrated that he is the registered proprietor of the suit motor vehicle and since the respondents have not adduced any evidence to rebut his claim, the subject motor vehicle ought to be released to him. He relies on the case of *Josphat Mugoro Ndung'u vs Director of Criminal Investigations & another* [2021] eKLR to support his submissions.
6. The respondents did not file any response to the application nor did they file submissions. The application is therefore unopposed.
7. From the pleadings by the applicant, it is evident that the police are detaining motor vehicle registration number KCL 491E Toyota Sienta in order to determine the ownership of the vehicle. However, the question arises as to whether the police are legally mandated to determine the ownership of a motor vehicle or any other property.
8. The practice in our courts is that a motor vehicle would normally be released to the owner on condition that it would be availed whenever required by the court where there is a pending case and where such a vehicle would be required as an exhibit. This principle was enunciated in *R vs John Nganga Mbugua* (2014) eKLR in the following terms:-

It is the practice in criminal cases that photographs will be taken by the scene of crime personnel of exhibits and scenes of crime which will be produced in evidence during the hearing. If it is possible to avail the exhibit itself, the photographs may also be produced. If the vehicle is released after its photographs are taken, no miscarriage of justice will be occasioned during the trial. It is not the duty of the complainant to take photographs of his vehicle and submit them to the police. Instead, it is the duty of the investigating officer to have exhibits photographed and ensure the photographs are processed in the manner authorized by the relevant regulations.

9. The applicant annexed a copy of records as proof of ownership of the vehicle. He has given a brief history as to how he came to acquire the motor vehicle and that he purchased the said motor vehicle from loans he borrowed from Equity Bank by virtue of being a member of Mathia Emmanuel Group and a soft loan from one Francis Wanjohi Mwangi. Moreover, the 1st respondent has not filed any response to shed light as to what they are investigating by holding the motor vehicle at their premises. It is also evident that the police have not charged the applicant with any offence since April 10, 2023 when the vehicle was detained.



10. The core duty of the 1st respondent is to investigate offences based on reports made at the police stations by complainants as well as preventing commission of crimes. The mandate of determining ownership or recovering debts is vested in civil courts where police officer may be called to give evidence in a matter he witnessed or dealt with in the course of his duties. Evidently, there is nothing to show that the applicant has committed a crime that is under investigation by the 1st respondent.
11. The role of the 2nd respondent is to prosecute criminal cases following investigations by the police. There is no criminal case before any court that calls upon the 2nd respondent to play its role. It is noted that the applicant has complained of the wrongful act of the 1st respondent but there is no allegation against the 2nd respondent.
12. It is noted that the 1st respondent was served and chose not to respond to the allegations herein. The act of the 1st respondent is wrongful since no charge has been preferred against the applicant since the vehicle was detained more than a month ago. The continued unlawful detention of the applicant's vehicle that is used for business continues to plunge the applicant in enormous losses.
13. I find that the applicant has satisfied this court of the unlawful detention of his vehicle. The application dated May 16, 2023 is hereby allowed.
14. The 1st respondent shall release the vehicle held at its premises with immediate effect.
15. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT NYERI THIS 21ST DAY OF JUNE, 2023.

F. MUCHEMI

JUDGE

RULING DELIVERED THROUGH VIDEO LINK THIS 21ST DAY OF JUNE, 2023.

